Items-158 &159.

17-07-2023

Ct. 8

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MAT 508 of 2019

The State of West Bengal & Ors.
Versus
Smt. Raj Kishori Rao & Ors.

With

FMA 1334 of 2005
CAN 1 of 2012 (old CAN 11737 of 2012)

Anirudh Rao
Versus
State of West Bengal

Mr. S.N. Mookherjee, Ld. AG
Ms. Tapati Samanta, Adv.
…for the State

Mr. Kamalesh Bhattacharya, Adv.

…for the appellant in FMA 1334/2005
& for respondent in MAT 508/2019

The writ petition filed by Sri Anirudh Rao was dismissed on 3rd December, 1998. Mr. Rao thereafter preferred an appeal being FMA 1334 of 2005. The said appeal was dismissed by a coordinate Bench on 10th August, 2004. The said order reads as follows:

> "By efflux of time this matter appears to have become infructuous. Accordingly, the matter is dismissed as infructuous. The interim order, if any, stands vacated."

After eight years, an application has been filed by the widow of the deceased for recalling of the order dated 10th August, 2004. In paragraph 10 of the said application, it is stated that she shall take steps for substitution after setting aside abatement of the appeal and further she would file an application for consequential relief.

Till date, no application has been filed for setting aside abatement. In the application for restoration, no prayer has been made for condonation of delay.

However, in view of the submission made by Mr. Kamalesh Bhattacharya, learned Counsel representing the respondent no.1 today and also on the earlier occasions that the issue decided by Justice Samaresh Banerjee (retired) has no relevance, there is no requirement to decide the application for restoration.

The learned Advocate General has submitted that the judgement of Justice Samaresh Banerjee (Retired) is relevant and would have a bearing in the other appeal.

In view thereof, the application being CAN 1 of 2012 (old CAN 11737 of 2012) stands dismissed. However, there shall be no order as to costs.

In Re: MAT 508 of 2019

We have heard the learned Advocate General for the appellants.

The matter stands adjourned till 9th August, 2023 for further hearing.

The parties are directed to file their list of dates and written notes of argument in the meantime.

(Uday Kumar, J.) **(Soumen Sen, J.)**